IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8154 OF 2007

Sandeep Yeshwant Patil .. Petitioner.

vs.

Maharashtra Public Service

Commission & Ors. .. Respondents.

Mr. V.A. Sugdare for Petitioner.

Mr. R.P. Behre, Addl. G.P. for respondent no.1 MPSC.

WRIT PETITION NO. 8183 OF 2007

Uma Dagdusa Kshatriya & Ors. .. Petitioners.

vs.

Maharashtra Public Service

Commission & Ors. .. Respondents.

Mr. R.P. Lote for Petitioners.

Mr. R.P. Behre, Addl. G.P. for respondent no.1 MPSC.

CORAM: J.N. PATEL &

A.A. SAYED, JJ.

DATE: 2ND NOVEMBER, 2007.

P.C.

. These two petitions are filed by persons who are aggrieved by the communication received from MPSC rejecting their application for the post of Asst. Public Prosecutor Group A on the ground that they are not eligible being above the prescribed age i.e. candidate should not be more than 33 years on 1.11.2006 with the permissible relaxation specified in the advertisement. The requirement of upper age limit is not made applicable to persons already working as police prosecutors in the service of the Government of Maharashtra on the date of application.

2. It is the contention of the petitioners that they are already working as public prosecutors in the service of Govt. of Maharashtra and, therefore, the upper age limit as prescribed in the advertisement will not be applicable to them. Our attention has been drawn to an interim order dated 31st October, 2007 passed by a Division bench of this Court at Aurangabad in a writ petition filed by Mukund Nivrutirao Kasbe & Ors. vs. State of Maharashtra and others wherein the Division bench of this Court has observed:-

> We have given our anxious consideration to the issues involved in this matter. It is apparent from the record that there is a apparent mistake in the advertisement issued by Respondent No. 2 of which relevant part is para 14(3) in respect of eligibility of the

candidates who are aspirant to appear for the examination to be held for the post of Assistant Public Prosecutor, Group (A) in the Directorate of Public Prosecutions of the Government of Maharashtra" and the Court permitted them to appear for the written examination by directing that pending hearing and final disposal of the petition the Respondent No. 2 is directed to allow the petitioners to appear for the written examination scheduled on 18.11.2007 provisionally.

3. The learned counsel appearing for the petitioners in the two petitions submitted that the petitioners before the Aurangabad Bench are similarly placed and their applications came to be rejected for the same reason. On going through the order dated 31st October, 2007 passed by the Division Bench at Aurangabad in Writ Petition No. 4175 of 2007, we are not able to gather whether the Division Bench has considered the issue which arises in the present petition i.e. whether a public prosecutor who is appointed on ad-hoc basis is eligible for relaxation of the upper age limit. We are very clear on this aspect that the advertisement clearly provides that upper age limit will not apply to persons already working as public prosecutors in service of Government of Maharashtra on the date of application means those

public prosecutors who are appointed on regular basis and are considered as 'in service' cadre. Therefore, such a relaxation in the upper age limit does not apply to special public prosecutor or public prosecutor appointed on ad-hoc basis and, therefore, the petitioners who are working as public prosecutors on ad hoc basis are not entitled for relaxation of age. Therefore, admittedly the two petitioners having crossed the age of 33 years on 1.11.2006, they are not eligible to appear for the examination to be conducted for MPSC for the post of Assistant Public Prosecutor, Group 'A' in the Directorate of Public Prosecutions in the service of Govt. of Maharashtra. The two petitions, therfore, stand dismissed.

4. An authenticated copy of this order may be made available to the learned counsel for the petitioners.

(J.N. Patel, J.)

(A.A. Sayed, J.)